

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re RICKY RENEE SANDERS,
on Habeas Corpus.**

A126477

**(Alameda County
Super. Ct. No. C144018)**

THE COURT:*

Following this court's disposition of petitioner Ricky Renee Sanders' appeal in case number A105385 from his conviction of burglary and other offenses, the trial court resentenced petitioner to a term of 7 years, 8 months in state prison, and stayed several counts pursuant to Penal Code section 654. By letter dated October 17, 2008 addressed to the trial court, the Department of Corrections and Rehabilitation suggested that the trial court's amended abstract of judgment contained numerous errors. On November 6, 2008, the trial court issued an amended abstract of judgment, which, inter alia, increased petitioner's prison term to 9 years, 4 months.

Petitioner appealed from the November 6, 2008 resentencing, and his appeal remains pending in case number A125876. Viewing his appellate remedy as inadequate based on his contention that he would have been released from prison absent the

* Before Jones, P.J., Needham, J. and Bruiniers, J.

November 6, 2008 resentencing, petitioner also seeks relief by way of petition for writ of habeas corpus.

Petitioner alleges that the November 6, 2008 resentencing occurred in the absence of petitioner and his counsel, and thereby violated petitioner's constitutional rights to notice, presence, counsel, and an opportunity to be heard. The trial court's amended abstract of judgment from November 6, 2008, and the court's minutes reflecting a sentence corresponding to that reflected in the November 6, 2008 abstract of judgment, do not demonstrate that counsel for petitioner and the People were present at a resentencing hearing on or about November 6, 2008. To the contrary, both documents reference a hearing held on January 21, 2004, which was petitioner's *original* sentencing date. The Attorney General's response to the habeas petition indicates that "[s]o far as respondent is able to determine, neither the People nor defense counsel were notified of the process resulting in the third abstract of judgment." The Attorney General concedes that petitioner must be resentenced at a properly noticed hearing, pursuant to *People v. Mora* (2002) 99 Cal.App.4th 397.

Therefore, petitioner is entitled to relief. Petitioner and the Attorney General have waived issuance of an order to show cause and oral argument, and stipulate to the immediate issuance of the remittitur.

The petition for writ of habeas corpus is granted. A writ of habeas corpus shall issue commanding the superior court to forthwith (1) vacate the sentence rendered on November 6, 2008, (2) provide notice to all parties of a resentencing hearing, and (3) conduct the resentencing hearing in petitioner's presence. This decision shall be final as to this court immediately. (Cal. Rules of Court, rule 8.387(b)(3)(A).) The remittitur shall issue forthwith. (Cal. Rules of Court, rule 8.387(f).) The clerk shall file a copy of this opinion in case number A125876.